NOS Clearance and Review Policy and Procedures for Interagency Agreements and Memoranda of Agreement or Understanding

PURPOSE

This document prescribes policies and procedures for the review and clearance of Interagency Agreements, International Agreements and Memoranda of Agreement or Understanding between elements of the National Ocean Service and other organizations outside the Department of Commerce. It also provides sample transmittal memoranda for funded and unfunded agreements, a checklist, definitions and sample formats for such agreements.

SCOPE

The guidance contained herein applies to all NOS organizational units involved in reimbursable work and unfunded relationships with other entities as set forth in the Policy section below. It is meant to supplement the guidance contained in the References and Authorities section. This document does not prescribe procedures for the review and clearance of any contract, grant, or cooperative agreement since those agreements are governed by the Federal Acquisition Regulations (FAR), Federal Grant and Cooperative Agreement Act, Department of Commerce Administrative Order 203-26, and other Department of Commerce policy guidance. Nor does it apply to the Cooperative Research and Development and Invention Licensing Agreements under the Federal Technology Transfer Act of 1989 which are governed by NOAA Administrative 201-103 dated November 13, 1989. It also does not Interagency/Intergovernmental Personnel Agreements which are addressed in Personnel Regulations. (BankCard purchases and mandatory sources of supply such as General Services Administration, Government Printing Office, etc. are covered by the FAR and therefore excluded from this guidance.)

REFERENCES AND AUTHORITIES

Department of Commerce Accounting Principles and Standards Handbook, Chapters 17 and 18.

Department Administrative Order 203-26, Department of Commerce Grants Administration, dated May 15, 1985.

Department Administrative Order 218-4, Treaties and Other International Agreements, dated January 14, 1992.

Department Organization Order 10-5, Chief Financial Officer and Assistant Secretary for Administration, dated January 22, 1996.

NOAA Administrative Order 201-105, Memoranda of Agreement or Understanding, dated October 22, 1992.

NOAA Budget Handbook, Chapter 2, Section 03, Reimbursable Task Planning (RTP), dated June 30, 1994.

NOAA Finance Handbook, Chapter 9, Fees for Special Products and Services, dated April 23, 1990.

OMB Circular No. A-25, SUBJECT: User Charges, dated July 8, 1993.

POLICY

In furthering its programs, NOS becomes involved on a continuing basis with a large number of international, Federal, state and local agencies, universities, tribal organizations, and other public and private institutions. Relationships may or may not be financial transactions. These relationships are encouraged but require proper documentation and review by NOS Headquarters and the Office of General Counsel (OGC), Department of Commerce. Such reviews ensure that agreements are in the proper format, reflect the appropriate authority for entering into the specific relationship and do not violate any of the laws governing NOS obligations of its appropriated funds. Exceptions to the review requirement are Economy Act inter and intraagency agreements of \$100,000 or less, Joint Project Agreements with Federal agencies of \$100,000 or less and unfunded Memoranda of Agreement or Understanding (MOA/U) with Federal agencies or state agencies. However, if the unfunded MOA/U involves the transfer or loan of personal property to another Federal or state entity, the OGC review is required. All other such agreements are subject to the review requirements.

In many cases, contracts, grants or cooperative agreements would not be the appropriate instrument to reflect the relationship between the parties. (This is particularly true when the parties are Federal entities.) Accordingly, an Interagency Agreement or an MOA/U is the proper vehicle for documenting the arrangement with the outside organization(s).

An Interagency Agreement would be the appropriate instrument when funding is accepted by NOS for work to be conducted by NOS employees, contractors or grantees. Also, NOS transfers funds to other agencies when authority exists to do so and the other agency is uniquely qualified to conduct the work for NOS. In these cases as well, an Interagency Agreement must be executed to support the transfer of funding.

The authorizing statute for some Government programs requires agencies to obtain advance funding for projects. If not required by statute, funding from Federal entities may be provided in advance of the work to be conducted or reimbursed as work is completed; however, advances are

considered the preferred method of payment. Agreements for NOS to conduct work for non-Federal organizations must contain advance payment provisions, unless a waiver has been obtained. However, if the total estimated cost will exceed \$50,000 or the length of time to complete the work will exceed 6 months, an advance payment schedule may be established within the agreement. (See Chapter 2, Section 03, NOAA Budget Handbook, for details on advance payments, including exceptions to the requirement. Also, see **DEFINITIONS**, Attachment 1, for discussion of **Waivers**.)

A Model Interagency Agreement containing both mandatory and optional provisions is included in Chapter 2 of the NOAA Budget Handbook. This format may be used for agreements with Federal agencies for Economy Act transactions, incoming and outgoing funds, and International Agreements. Attachment 2 is a copy of the sample format. A sample format to be used for Joint Project Agreements between NOS and Federal and non-Federal organizations is Attachment 3.

Agreements between NOS and other organizations that **do not** involve funding are documented in MOA/U. The terms MOA and MOU are interchangeable. The acronym MOA/U shall be used throughout this document for consistency. NAO 201-105 provides guidance on drafting MOA/Us and the attachment to that Order may be used as a guide for drafting an MOA/U. A copy of the MOA/U format is provided as Attachment 4.

RESPONSIBILITIES

To ensure sound management in the administration of Interagency Agreements, International Agreements and MOA/Us, NOS managers are expected to have an understanding of the requirements for each authorizing statute they select to justify entering into an Interagency, International Agreement or an MOA/U. The specific responsibilities of NOS personnel involved in the process should be clearly defined in job descriptions and performance plans.

The following prescribes the minimum responsibilities assigned to such officials.

a. NOS field and Headquarters managers are responsible for:

(1) maintaining internal management control procedures that comply with policies set forth in this policy document and the References cited above;

- (2) ensuring that appropriate staff understand the documentation and review requirements for the agreements discussed in this policy memorandum;
- (3) ensuring proposed agreements are forwarded by the appropriate field or Headquarters Office Director to the NOS Headquarters Correspondence Unit, N/MB5, at least two months prior to the effective date or start date of work;
- (4) providing complete explanation as to why agreements are not submitted for review and clearance at least two months prior to the effective date or start date of work;
- (5) ensuring that all Interagency Agreements and International Agreements, both funds coming into NOS and funds going out to other organizations, and unfunded MOA/Us are justified as appropriate undertakings and cite the applicable legal authority(ies) for entering into the agreement;
- (6) ensuring a provision requiring advance funding is in Interagency and International Agreements, if required by the applicable legal authority(ies) or NOAA Budget policy;
- (7) ensuring full cost recovery is achieved on reimbursable projects in compliance with the NOAA-wide Standardized Labor Distribution Worksheet Procedures issued June 26, 1996 by the Office of Finance and Administration. (See **DEFINITIONS**, Attachment 1, for discussion of **Waivers**);
- (8) ensuring that reimbursable agreements include budget breakouts of estimated total project costs including direct labor and the appropriate overhead rate as determined by the NOAA Office of Finance and Administration;
- (9) ensuring that Joint Project Agreements include appropriate documentation and separate budget breakouts of costs contributed by NOS and the partner organization(s) to demonstrate equitability (See documentation requirements Paragraph d. "PROCEDURES FOR REVIEW AND CLEARANCE OF INTERAGENCY, INTERNATIONAL AGREEMENTS AND MOA/Us)";
- (10) ensuring that reimbursable agreements for more than one year include estimated funding for each of the subsequent years;
- (11) ensuring that user charges are imposed on recipients when special benefits have been conveyed beyond those occurring to the general public;
- (12) ensuring Economy Act agreements (outgoing funds) are supported by file documentation (See **DEFINITIONS**, Attachment 1, Page 1, for the four necessary conditions that must be met and documented in the file) prior to executing each transaction; and

(13) providing the N/MB5 the original of all signed funded Interagency, International Agreements and unfunded MOA/Us, including amendments (changes) and notices of termination.

b. The Director, N/MB, is responsible for:

- (1) providing assistance to NOS managers in developing the agreements cited herein;
- (2) reviewing agreements and related documents to ensure compliance with policies and procedures related to such agreements;
- (3) obtaining GCOS and DOC OGC clearance and preparing all related approval documents and distributing appropriate copies to interested parties, e.g., the agreement originating office, and the partner organization;
- (4) assigning reimbursable task numbers for reimbursable agreements, if they do not already exist, after they have been cleared by the OGC;
 - (5) conducting followup with the OGC and providing status information to NOS offices;
- (6) issuing policy guidance as necessary and serving as the principal policy contact on all matters related to Interagency Agreements, International Agreements and MOA/Us;
 - (7) maintaining Interagency and International Agreements and MOA/U files; and
- (8) providing the Administrative Services Division, OFA53, a copy of all signed unfunded MOA/Us, including amendments (changes) and notices of termination.

PROCEDURES FOR REVIEW AND CLEARANCE OF INTERAGENCY, INTERNATIONAL AGREEMENTS AND MOA/Us

a. All new Interagency, International Agreements and MOA/Us subject to the review requirements, as well as amendments/modifications to existing agreements, must be submitted to the Director, N/MB, at least two months before the start date. This will allow time for review by NOS Headquarters and clearance by the OGC before the agreement is effective. Any agreement not submitted two months before the start date must be accompanied by a complete explanation, signed by the field or Headquarters Office Director, as to why submission two months in advance was not possible.

Exceptions to the review and clearance process are:

(1) time extensions with no change to the scope of work;

- (2) Economy Act agreements of \$100,000 or less;
- (3) annual work and funding plans for subsequent years of work described in the original agreement cleared by the OGC, if there is no significant change to the scope of work;
- (4) unfunded MOA/Us with Federal or state entities; (However, if unfunded MOA/U involves the transfer or loan of personal property, OGC review is required.)
 - (5) Joint Project Agreements between Federal agencies of \$100,000 or less.
- **b.** Any agreement that has already been initiated must be accompanied by a full explanation signed by the Office Director as to why it was not submitted to NOS Headquarters prior to the start date and what harm would occur to the Government if the project were suspended pending OGC clearance. The explanation must also state what action has been taken to ensure that everyone involved understands the process to preclude similar action in the future. The Assistant Administrator for the National Ocean Service expects such actions to be rare occurrences
- **c.** The transmittal memorandum or supporting documentation for reimbursable agreements must demonstrate that:
- (1) the task cannot be performed economically by the requesting agency with its own facilities or by government-wide service agencies;
- (2) the services would not be considered to be in competition with private enterprise because of NOS's unique expertise and activities;
- (3) the end results will serve the public interest and are consistent with NOS programs;
- (4) undertaking the projects would not result in the diversion of resources to the detriment of NOS basic programs;
- (5) the results of the service will not result in controversy that will have an adverse effect on the Department's reputation for impartiality and objectivity; and
 - (6) no exclusive proprietary interest would accrue to the other party.

These same rules apply when NOS transfers funds to another organization for services or projects.

- **d.** A Joint Project Agreement (JPA) must include documentation explaining that:
 - (1) the project is essential to the furtherance of NOS's programs;
- (2) the project cannot be done as effectively without the participation of the partner organization and NOS and is of mutual interest to both parties; and
- (3) the cost for the project is apportioned equitably, unless a waiver of any portion of the costs has been approved. (See **DEFINITIONS**, Attachment 1, for discussion of **Waivers**).

Since costs charged to a reimbursable task must <u>not</u> include charges for resources not actually used to accomplish a project, funds transferred in from other Federal agencies **solely** to support a contract, cooperative agreement, or grant are not joint project agreements.

A JPA requires both the NOS and the partner organization to contribute resources on an equitable basis when they engage in projects or perform services on matters of mutual interest. The budget for the project or the service must include separate breakouts of costs contributed by NOS and the partner organization to demonstrate equitability in the conduct of the joint project, and the agreement itself must explain that the cost for the project is apportioned equitably. A sample format for a JPA is Attachment 3 to this guidance.

- **e.** Conveyance of special benefits to recipients, beyond those occurring to the general public, require the collection of user fees. User fees are to be collected in advance of, or simultaneously with the rendering of services, unless appropriations and authority are provided in advance to allow reimbursable services. Absent statutory authority to the contrary, user fees collected by NOS must be deposited into the Treasury.
- **f.** Each agreement, subject to the review requirements must be forwarded by a transmittal memorandum addressed to the Director, N/MB, signed by the responsible Line Office Director. The memorandum should contain the appropriate information cited above as applicable to that particular agreement. Sample transmittal memoranda for an Interagency Agreement (Reimbursable), a Joint Project Agreement and an MOA/U are attached to this document as Attachment 5. The Interagency Agreement sample may be used for funds transferring out of NOS as well. Also included is a Checklist, Attachment 6, to aid in preparing Interagency Agreements and MOA/Us.
- **g.** Upon receipt of the cleared agreement from OGC, the Director, N/MB, will send the clearance to the initiating office via memorandum. If signature authority is at the Assistant Administrator(AA) level, the AA will sign the agreement and the Director, N/MB, will transmit to the initiating office and to the other party(ies).

Guidance on approval and signature authority is as follows:

- (1) Delegations and approvals for reimbursable agreements are set forth in Chapter 2, NOAA Budget Handbook as revised by the Acting Deputy Under Secretary for Oceans and Atmosphere memorandum dated April 16, 1998. For interagency reimbursable agreements (incoming funds), Office Directors may approve and sign agreements \$250,000 and under. The Assistant Administrator for NOS approves and signs over \$250,000 to under \$1,000,000. Interagency reimbursable agreements \$1,000,000 or more or that require 10 FTEs must be routed to the NOAA Chief Financial Officer/Chief Administrative Officer for approval by the Deputy Under Secretary. (See Appendix N, NOAA Budget Handbook, for abstract format to be followed for this approval request.)
- (2) Delegations and approvals for interagency transfer of funds to other agencies are set forth in the NOS Delegations of Authority. NOS managers have the same approval authority for interagency transfer of funds (outgoing) as they do for procurement transactions; however, all such transfers must be supported by an agreement that has been reviewed and cleared, as set forth in this guidance, prior to forwarding to the servicing procurement office for processing.
- (3) Unfunded MOA/Us should be signed at the lowest level to which the significant responsibilities have been delegated. The Assistant Administrator and Office Directors shall sign all MOA/Us for which they have been delegated programmatic authority, except any proposed MOA/U which involves a major policy decision or has a potentially controversial or public interest implication. In such cases, the Under Secretary and Administrator of NOAA shall approve or sign.

N/MB will establish a reimbursable task number for all cleared agreements. If the agreement is a reimbursable over \$250,000, the Director, N/MB, will obtain the signature of the AA or designee for the acceptance document and transmittal letter to the sponsor. If the agreement is \$250,000 or less, the clearance documents will be forwarded to the appropriate official for signature and transmittal to the sponsor.

Attachments

- 1. Definitions
- 2. Sample Interagency Agreement
- 3. Sample Joint Project Agreement
- 4. Sample MOA/U (unfunded)
- 5. Sample Transmittal Memoranda
- 6. Interagency Agreement and MOA/U Checklist

DEFINITIONS

Contract

The legal instrument reflecting a relationship between the NOS and a business, organization or individual whenever: (a) the principal purpose of the relationship is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government, or (b) it is determined in a specific instance that it is appropriate to use a type of procurement contract. A contract may also refer to the legal instrument reflecting a relationship between a recipient and contractor or between such contractor and subcontractor.

Cooperative Agreement

The legal instrument reflecting a relationship between the NOS and a recipient (individual or entity) whenever: (a) the principal purpose of the relationship is to provide financial assistance to the recipient and (b) substantial involvement is anticipated between NOS and the recipient during performance of the contemplated activity. Financial assistance is the transfer of money, property, services or anything of value to a recipient in order to accomplish a public purpose of support or stimulation which is authorized by Federal statute. Cooperative Agreements are subject to the same Office of Management and Budget (OMB), Treasury, and other Federal directives as grants. DAO 203-26, Department of Commerce Grants Administration, prescribes policies for the award and general administration of Department of Commerce grants and cooperative agreements.

Economy Act, 31 U.S.C. ' 1535

Relevant portions of the Act are as follows:

The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if--

(1) amounts are available; (2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government; (3) the agency or unit to fill the order is able to provide the ordered goods or services; and (4) the head of the agency decides ordered goods or services cannot be provided as conveniently or cheaply by a commercial enterprise.

Payment shall be made promptly by check on the written request of the agency or unit filling the order. Payment may be in advance or on providing the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the agency or unit filling the order. A bill submitted or a request for payment is not subject to audit or certification in advance of payment. Proper adjustment of amounts paid in advance shall be made as agreed to by the heads of the agencies or units on the basis of the actual cost of goods or services provided. An order placed or agreement made under this section obligates an appropriation of the ordering agency or unit. The amount obligated is deobligated to the extent that the agency or unit filling the order has not incurred obligations, before the end of the period of availability of the appropriation, in
(1) providing goods or services; or (2) making an authorized contract with another person to provide the requested goods or services.

Grants

The same definition as Cooperative Agreement; however, there is no substantial involvement anticipated between NOS and the recipient during performance of the contemplated activity.

Interagency Agreements

A written document containing specific provisions of governing authorities, responsibilities, and funding entered into between NOS and a reimbursing sponsor or between another organization and NOS when NOS is the sponsor. Such an agreement must be in existence prior to initiation of reimbursable work by NOS and must cite the applicable legal authorities for entering into the agreement, whether the funding is coming into NOS or going out. Depending on the project or service, various NOS programmatic authorities permit these agreements as well as other authorities such as the Economy Act, 31 U.S.C. 1535, the Joint Project Authority, 15 U.S.C. 1525, and the Intergovernmental Cooperation Act, 31 U.S.C. 6505. A Model Interagency Agreement containing both mandatory and optional provisions is included in Chapter 2 of the NOAA Budget Handbook. This format may be used for both Federal and non-Federal organizations. It contains both mandatory and optional provisions.

Incoming Funds (Reimbursables)

Reimbursable work may be accepted only if it can be performed without adversely affecting regular NOS programs and if: (1) the services would not be considered to be in competition with private enterprise because of NOS's unique expertise; (2) the work cannot be performed economically by the requesting agency with its own facilities or by government-wide service agencies; (3) performance by NOS is consistent with NOS programs and will serve the public interest; (4) the results of the work will not cause controversy that will have an adverse effect on the Department's reputation for impartiality and objectivity; and (5) no exclusive proprietary interest would accrue to the other party.

The most common authority used for reimbursable work between Federal agencies is the Economy Act of 1932, as amended. All payments for work or services performed are to be deposited to the appropriation or fund against which the charges have been made. Furthermore, the act requires that a proper cost adjustment of amounts paid in advance be made on the basis of the actual cost of goods or services provided. (See **DEFINITIONS**, Attachment 1, Page 1, for the four necessary conditions that must be met and documented in the file prior to executing each Economy Act transaction.)

Joint Project Agreements (Incoming Funds and Equitably Shared)

The Secretary of Commerce has specific authority under 15 U.S.C. 1525 to engage in joint projects or perform services on matters of mutual interest for nonprofit organizations, research organizations, or public organizations and agencies. Joint project agreements are entered into if:

- (1) the project is essential to the furtherance of NOS programs;
- (2) the project is of mutual interest and cannot be done effectively without the participation of the partner organization and NOS, and;
- (3) the cost of the project is apportioned equitably, unless a waiver of any portion of the costs has been approved by the Chief Financial Officer and Assistant Secretary for Administration, Department of Commerce. (See **Waivers** Definition Authority for approval has been redelegated to the heads of operating units within the Department)

Such agreements require both the NOS and the partner organization to contribute resources on an equitable basis when they engage in projects or perform services on matters of mutual interest. The budget for the project or the service must include separate breakouts of costs contributed by NOS and the partner organization to demonstrate equitability in the conduct of the joint project. All payments for work or services performed are to be deposited to the appropriation or fund against which the charges have been made.

Outgoing Funds

Transfers of funds to other agencies is appropriate when:

- (1) the work would not be considered to be in competition with private enterprise because of the other agency's unique expertise;
- (2) specific legal authority exists to justify the transfer of funds as an appropriate undertaking;

- (3) the results of the work will not result in controversy that will have an adverse effect on the Department's reputation for impartiality and objectivity;
- (4) no exclusive proprietary interest would accrue to the other party; and (5) the transfer is in the best interests of the Federal Government.

If the funds are to support a contract, cooperative agreement or grant, the transfer should include the agreement number, if known.

Memorandum of Agreement/Understanding (MOA/U)

In furthering its programs, NOS becomes involved on a continuing basis with a large number of international, Federal, state, and local agencies, universities, and other public and private institutions. These relationships are encouraged and frequently require or are aided by proper documentation. The use of the MOA/U, as set forth in NOA 201-105, is appropriate whenever: (1) the transaction does not involve funding; (2) undertakings are assumed by both parties; (3) an official documentation of these undertakings is required or may be of interest to third parties such as the Congress, state legislatures, or university trustees; and (4) the undertakings are expected to continue over an extended period of time, although typically they can be terminated by either party on relatively short notice. NOA 201-105 provides guidance on drafting a MOA/U along with a sample agreement. Each must cite a statutory and/or regulatory authorities authorizing the objectives of the agreement.

Overhead Rate

The NOAA Office of Finance and Administration determines overhead rates for NOS Headquarters and NOS field offices based on cost experience from prior years. These rates are updated periodically and provided to the Financial Management Centers by the NOS Budget Office. These rates must be used and applied to direct costs when developing budgets for reimbursable work in order to recover the total costs of tasks NOS undertakes for other organizations.

Overhead represents indirect costs or expenses of an agency which cannot be charged as belonging exclusively to any particular part of the project or service being performed by NOS personnel (rent, lighting, heating, accounting, other office expenses and depreciation).

Total Cost Recovery

The NOS is required to recover full costs for reimbursable work and to ensure an equitable apportionment for joint projects in relation to the benefits received. Direct labor must be recorded in accordance with the NOAA-wide Standardized Labor Distribution Worksheet Procedures issued June 26, 1996 by the Office of Finance and Administration for such projects. Supplies, travel and other expenses directly related to the work must be recovered as well as the applicable overhead rate for the NOS activity.

User Fees

User fees are to be charged by an agency when it conveys special benefits to individuals or organizations beyond those occurring to the general public. The fees are to be collected in advance or simultaneously with the rendering of services, unless appropriations and authority are provided in advance to allow reimbursable services. Absent statutory authority to the contrary, user fees collected by NOS must be deposited into the Treasury. Guidance on user fees is provided in OMB Circular A-25, User Fees, the Accounting Handbook, Chapters 17 and 18 and the NOAA Finance Handbook, Chapter 9, Fees for Special Products and Services.

Waivers

Advance Payments

Chapter 2, NOAA Budget Handbook, provides guidance on waiving advance payments for both Federal and non-Federal sponsored work. Although advances are considered the primary method of payment, the head of the program office responsible for performing the reimbursable work may determine, on a case by case basis, that an advance payment is not feasible.

Work performed for non-Federal sponsors without an advance payment requires the head of the program office responsible for performing the work to justify the action and request, in writing, a waiver of the advance payment policy from the Chief, Financial Officer/Chief Administrative Officer, prior to accepting the reimbursable work.

Elements of Distributed Costs

Chapter 2, NOAA Budget Handbook, provides guidance on requesting waivers of any costs associated with reimbursable work. No waivers of any elements of distributed costs will be made without prior approval of the Chief, Financial Officer/Chief Administrative Officer. Distributed costs are defined in the Handbook and include such items as NOAA overhead, depreciation and GSA rent. Requests must be fully justified in writing prior to negotiating the agreement and include the amount requested to be waived. Each must also contain a direct task number to which the waived costs will be charged. Sample waiver request formats are provided in Appendix N of the Handbook.

Joint Project Agreement Costs

The Department Organization Order 10-5, prescribes the authority and functions of the Chief Financial Officer and Assistant Secretary for Administration. That order delegates to the Chief Financial Officer and Assistant Secretary for Administration the responsibilities of the Secretary of Commerce regarding special studies, reports, technical information, and other related functions under 15 U.S.C. 1525-1527 (Public Law (P.L.). This includes approval of waivers of costs under joint project agreements authorized by 15 U.S.C. 1525. That authority has been redelegated to the heads of operating units within the Department (Chapter 18, Sections 6.05 and 6.06, Department of Commerce Accounting Principles and Standards Handbook). responsible NOS field or Headquarters manager will prepare a justification for the cost which the non-profit organization, research organization or public organization or agency should not be required to pay. The request must be forwarded through the Assistant Administrator for National Ocean Service to the Chief Financial Officer/Chief Administrative Officer, NOAA, who will advise the Under Secretary for Oceans and Atmosphere or designee on determining the appropriate portion of the project's costs to be waived. Each waiver of cost must be obtained in advance of signing any agreement to undertake the joint project and in advance of beginning any work for the project.

Factors for Waiver of Costs

Each of the following factors may be a basis for waiver: (a) the organization is financially unable to pay its full apportioned cost; (b) the recovery of full cost is in conflict with statutory requirements or would seriously impair the objectives of the program or public policy; (c) the cost of collecting the fees would be an unduly large part of the receipts of the activity; (d) the furnishing of the service without charge is an appropriate or reciprocal courtesy to a foreign country or international organization or is in accordance with an international agreement to which the United States has subscribed; (e) comparable fees are set on a reciprocal basis with a foreign country; (f) the recipient is engaged in a non-profit activity designed for the public safety, health, or welfare; (g) payment of the full cost by a Federal agency, State or local government, or non-profit group would not be in the interest of the program; and (h) the furnishing of information to a recipient is clearly a reasonable exchange of information with a voluntary contributor of information to a Department program.

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Chapter 02 - BUDGET EXECUTION (continued)

EXHIBIT XVI

MODEL

Reimbursable Task No.

INTERAGENCY AGREEMENT

BETWEEN THE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)

AND THE

NAME OF AGENCY

General Information I.

provide general introductory information about functions of the agencies entering into the agreement and the purpose of the agreement.

* II. References-and Authorities

Cite statutory and/or regulatory authorities e.g., applicable U.S. Code citations, Executive Orders, GAO Directive(s), etc. Also cite other pertinent references, agency directive(s), previous agreements, correspondence or memoranda, etc.

III. Purpose

Provide reason(s) for which the agreement is necessary, a more detailed account of what is to be accomplished under the terms of the agreement, a summary of what services are to be performed by the respective agencies entering into the agreement, etc.

Definitions TV.

Identify and define terminology which is unique, technical or, subject to variable definitions, and which applicable to the agreement. This area could include definitions of both non-technical and technical terminology as may be applicable to the provisions of the agreement.

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V. Responsibilities of Agencies

A. Support Services and Supplies

Services to be performed by the appropriate agency entering into the agreement should be separately itemized. This would cover, for example, areas such as:

- (1) Plant services
- (2) Procurement
- (3) Construction and alterations
- (4) Personnel services (Include classification and grade level if possible)
- (5) Capitalized equipment (Each reimbursable agreement will contain a statement indicating whether capitalized equipment will be purchased for purposes of carrying out the agreement. Such equipment will be identified to the extent practicable. It should be made clear to the requesting agency that unless otherwise specified in the agreement, all capital equipment purchased with reimbursable funds will become the property of NOAA upon completion of the project.)
- (6) Other Services

(The management responsibilities of the respective agencies under the agreement should be completely identified.)

B. Reimbursement for Support Services and supplies

The basis for reimbursement to be made by the agency receiving support services and supplies pursuant to the agreement should be set forth. These could include the following:

- (1) Ratio of square footage occupied
- (2) Ratio of technical labor
- (3) Unit cost
- (4) Actual Cost

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* VI. <u>Programming. Budgeting, Funding, and</u> Reimbursement Arrangements

Within the terms of this agreement,, budgeting, funding,, and reimbursements will be accomplished by the respective agencies entering into this agreement in accordance with the fiscal responsibilities indicated herein.

- o Provision should be included for either agency's requirements or proposals to be submitted sufficiently in advance to permit required planning by the agency having to perform the work.
- o Provide for estimates of anticipated reimbursements which can be used as a guide in each agency's budgeting accounting operations and which will reimbursement either to NOAA or to the other entering into this agreement (or other public and private organizations and individuals) after vouchers are received certified for payment. Estimates should redetermined periodically, semiannually or annually, reapportioned, as necessary, by amendment to reflect the actual cost experience and prospective changes in the operational requirements stipulated under the agreement. Total dollar values should be included.
- o An advance (for the entire estimated cost of the work) is the primary method of payment. However, an advance payment schedule may be established within the reimbursable agreement if the total estimated cost will exceed \$50.000 or the length of time to complete the work will exceed 6 months..
- o Include any limitations on actual cost which may be incurred in excess of the estimated cost without the approval of the participating agencies (i.e., 5 percent or 10 percent).
- o Include, if appropriate, types of cost which would not be reimbursed.
- o The agency address, agency location code, fiscal year, Treasury symbol, and task code must be included in each agreement.
- o If applicable, for federal agencies, the <u>on-line Payment</u> and <u>Collection (OPAC) code</u> and <u>OPAC</u> billing address and contact person's name and phone number must be included.

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o Identify the method of payment for supplies, services, reports, etc., incident to the terms of the agreement; e.g., on receipt of invoice, monthly, advance of fund basis, etc. Be sure to indicate whether advance funding is with or without fiscal year limitations. Also identify the method in which financial transactions will be handled; e.g., - CD-435 "Procurement Request" as a follow-through procurement document that will take care of the accounting transactions required by the terms of the agreement. Indicate that NOAA is an OPAC agency and that billings to most other Federal agencies will use OPAC on a monthly or advance basis.

VII. Procedures for Inspection/quality Assurance

This area should set forth the arrangements regarding inspection and/or quality assurance arrangements required by each of the participating agencies that will assure accomplishment of the objectives of the agreement.

VIII. Publication

"The results of the project herein outlined may be published jointly by the cooperators or by either of these agencies separately. Manuscripts prepared for publication by either party shall be submitted to the other party for suggestions and approval prior to publication. Either party to this agreement shall be free to use any of the results obtained".

o Provision should be made for alternative actions in the event of disagreements regarding the publication. credits and/or releases resulting from any of the projects hereunder.

IX. Public Affairs/Press Liaison

An understanding should be reached regarding lead agency responsibilities for any Public Affairs/ Congressional Affairs data releases concerning any part of the objectives of this agreement or the results obtained under the terms of the agreement.

X. Data Rights

This area should fully identify the rights of the Government to retain all rights to data developed by either party under the terms of the agreement.

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XI. <u>Subsidiary Agreements</u>

Additional working agreements, including specific reimbursable cost arrangements, if needed, shall be effected in writing by both parties to the agreement.

XII. Third Party Liability

Provision should be made, as necessary, for liability to third parties for any acts arising out of the performance of official duty of Government employee(s) or employee(s) of private contractors.

The agency that should have the responsibility for the investigation, adjudication, settlement and payment of any claims with respect to third party liability arising out of the use,, damage, or destruction of loaned property; that is, property in the custody and under the control of either of the respective parties to this agreement should be fully set forth.

*XIII. Amendments and Review

"This agreement may be amended at any time by the mutual consent of the agencies concerned".

"This agreement will be reviewed periodically, but not less than annually. It may be subject to reconsideration at such other times as may be required and as agreed to by the parties entering into the agreements."

* XIV. Other Provisions

"Nothing herein is intended to conflict with current NOAA or (name of agency) directives. If the terms of this agreement are inconsistent with existing directives of either of the agencies entering into this agreement, then those portions of this agreement which are determined to be inconsistent shall be invalid; but the remaining terms conditions of this agreement not affected inconsistency shall remain in full force and effect. the first opportunity for review of the agreement, such changes as are deemed necessary will be accomplished by either an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties."

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"Should disagreement arise as to the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level,, the area(s) of disagreement shall be reduced to writing by each party and presented to the other party for consideration at least / / days prior to forwarding to respective higher quarters for appropriate resolution.

* XV. <u>Terms of the Agreement</u>

"The terms of this agreement will become effective upon the signature of both the approving officials of the respective agencies entering into this agreement".

"The terms of this agreement will remain in effect until terminated by (1) mutual agreement, (2) (specific period) advanced written notice by either party, or (3) the operation/terms of this interagency agreement, whichever shall first occur".

"All direct and indirect phasing out costs shall be paid by the agency requesting the termination. Termination costs claimed shall not exceed the actual costs incurred as a result of termination of the project".

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| THIS AGREEMENT IS ENTERED DAY OF / | INTO AND MADE EFFECTIVE THE / EXCEPT AS OTHERWISE |
|--|--|
| PROVIDED HEREIN. THIS AGREE | PEACEPT AS OTHERWISE EMENT SHALL REMAIN IN FULL FORCE AND WRITTEN AGREEMENT OF THE PARTIES |
| APPROVED: | |
| National Oceanic and Atmospheric Administration | (Participating Agency-Name) |
| (Signature) Name, Title - NOAA | (Signature) Name, Title |
| Date | Date |
| CONCURRENCE: | |
| (Signature) General Counsel, NOAA | |
| - | outlined in Exhibit XVI may be r in a different order, or |

The provisions outlined in Exhibit XVI may be combined, appear in a different order, or omitted completely when applicable. Those provisions marked with an asterisk (*) are mandatory and must be included. The language appearing in quotation marks may be used verbatim, if desired; however, material appearing in brackets is explanatory only

SAMPLE

JOINT PROJECT AGREEMENT

BETWEEN THE

NATIONAL OCEAN SERVICE

AND THE

(NAME OF THE OTHER ORGANIZATION)

I. General Information

Provide general introductory information about the functions of the parties entering into the agreement and identify the partner(s) to the agreement (nonprofit organization, research organization, or public organization or agency).

III. References and Authorities

NOS is authorized to enter into this agreement pursuant to the Department of Commerce's Joint Project Authority, 15 U.S.C. 1525. NOS has determined that this arrangement is of mutual benefit to both parties and that the costs will be equitably apportioned. NOS has programmatic authority to participate in this project pursuant to (cite statutory authority such as Coastal Zone Management Act, Coast and Geodetic Survey Act, or other applicable authority).

III. Purpose

Provide reason(s) why the agreement is necessary and why the project cannot be done as effectively without the participation of the partner(s) and NOS. Explain that the project is of mutual interest to the parties and is essential to the furtherance of NOS's programs. Summarize what is to be accomplished under the terms of the agreement.

IV. Definitions

If necessary, identify and define terminology which is unique, technical or subject to variable definitions, and which is applicable to the agreement. This could include definitions of both non-technical and technical terminology as may be applicable to the provisions of the agreement. (This paragraph is optional.)

Attachment 3

V. Responsibilities of Agencies

Describe the services to be performed and the specific responsibilities of each agency involved in the joint project. (A separate proposal or statement of work may also be incorporated by reference and attached to the agreement.)

VI. Period of Performance

Provide the start and ending date of the joint project.

VII. Funding and Payments

Agreement must state that funding is available for the current fiscal year. If agreement is for a longer period than the current fiscal year, estimated funding levels for each of the subsequent years should be included along with a statement that performance beyond current fiscal year is dependent on availability of funds.

A budget must be included either in the agreement or attached to it. The budget must reflect breakout of total estimated costs, including direct labor and appropriate overhead rate, for each agency participating in the joint project. The costs shall be apportioned equitably in relation to the benefits received by the partners to the agreement and an explanation included in the agreement attesting to this condition.

If funds are to be transferred to NOS for their participation in the joint project, advance payment is the primary method for payment from both Federal and non-Federal participants. However, non-Federal participants <u>must</u> pay in advance, unless a waiver has been obtained prior to initiation of the project.

VIII. Amendments and Review

This agreement may be amended at any time by the mutual consent of the agencies concerned.

IX. Other Provisions

Nothing herein is intended to conflict with current NOS or (name of agency) directives. If the terms of this agreement are inconsistent with existing directives of either of the agencies entering into this agreement, then those portions of this agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions of this agreement not affected by inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, such changes as are deemed necessary will

be accomplished by either an amendment or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.

Should disagreement arise as to the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be reduced to writing by each party and presented to the other party for consideration at least 30 days prior to forwarding to respective higher management for appropriate resolution.

X. Terms of the Agreement

ADDDOLLED

The terms of this agreement will become effective upon the signature of both the approving officials of the respective agencies entering into this agreement.

The terms of this agreement will remain in effect until terminated by: mutual agreement, 60 days advanced written notice by either party, or ending date of the period of performance, whichever shall occur first.

| APPROVED: | |
|-------------------------|-----------------------------|
| National Ocean Service | Participating Agency - name |
| (Signature) Name, Title | (Signature) Name, Title |
| Date | Date |

Memorandum of Agreement

Between the

National Oceanic and Atmospheric Administration (NOAA)

and the

(Name of Other Party)

| Start | Date |
|--------------|------|
| Proposed End | Date |

I. PURPOSE AND SCOPE

Briefly describe the purpose and objectives of the agreement. Also include general introductory information about the functions of the parties involved.

II. REFERENCES AND AUTHORITY

State statutory and/or regulatory authorities authorizing the objectives of the agreement e.g., applicable Public Law, U.S. Code Citations, Executive Orders, GAO directives(s). Also cite any other pertinent references such as agency directive(s), previous agreements, correspondence, or memoranda, etc.

III. SUBSTANCE

Provide a comprehensive description of what is being agreed to, responsibilities of the commitments of each party; and the terms and conditions for performance (including delegations of authority, channels and protocols for working relationship, liaison, regulations, policies, and procedures).

IV. PERIOD

State the duration of the agreement along with a selfcancellation clause, if needed.

V. MODIFICATION/CANCELLATION PROVISION

Specify provision for future modifications or cancellations.

OTHER PROVISIONS - Under this heading, include the following: VI.

"Nothing herein is intended to conflict with current NOAA or (name of agency) directives. If the terms of this agreement are inconsistent with existing directives of either of the agencies entering into this agreement, then

those portions of this agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, all necessary changes will be accomplished by either an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties."

"Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution."

VII. SIGNATURE OF EACH PARTY

| Include | the | signature, | title, | address, | and | date | for | each |
|---------|-----|------------|--------|----------|-----|------|-----|------|
| party. | | | | | | | | |

| Signature | Date | Signature | Date |
|-------------|------|-------------|------|
| Typed Name | | Typed Name | |
| Title | | Title | |
| Address | | Address | |

SAMPLE TRANSMITTAL MEMORANDUM FOR INTERAGENCY AGREEMENT

MEMORANDUM FOR: Director, N/MB

ATTN: N/MB5

FROM: Director, N/CGS

SUBJECT: Transmittal of Reimbursable Agreement for Clearance

(If the funding to be provided by the sponsor is "pass through" money for contracts/cooperative agreements/grants, the memorandum should so state and provide the number of the Agreement if it already exists.)

We have determined that the requesting agency cannot perform the project (or service) economically. We have also determined that the services covered by this Agreement are not in competition with private enterprise and will serve the public interest. The undertakings are **consistent** with NOS programs and will not result in diversion of resources to the detriment of our basic programs. Further, the results of the service will not result in controversy that will have an adverse effect on the Department's reputation and no exclusive proprietary interest will accrue to the other party to this Agreement.

Attachment 5a

The following additional information is provided to aid the clearance process:

Funding Agency: Federal Aviation Administration, U. S. Department of Transportation

Amount of Reimbursement: \$150K

Technical Contact Person: XXXXXXXXXX, 301-XXXXXXX **Who Will Accomplish the Work:** Photogrammetry Division

Subject/Key Word: XXXXXXXXX New/Existing Agreement: New

Period of Performance: 1 yr (May 1, 1998 - April 30, 1999)

NOS Authority: U. S. Code, Title 33, Section 883e

Funding Agency Authority: 31 U.S.C. 1535, The Economy Act

Number of FTE(s) Required: 0.39

Organization: N/NGS3

If you have any administrative questions, please contact XXXXXXXX at 301-XXXXXXX.

Enclosure

SAMPLE TRANSMITTAL MEMORANDUM FOR INTERAGENCY AGREEMENT **JOINT PROJECTS**

MEMORANDUM FOR: Director, N/MB

ATTN: N/MB5

FROM: Director, N/ORM

SUBJECT: Transmittal of Joint Project Agreement for Clearance

Enclosed is a new joint project agreement between NOS and the H. John Heinz, III, for Science. Economics and the Environment Center XXXXXXXXXXXXXXXXX, for your review, approval and transmittal to the Office of General Counsel for clearance. (If the action is an amendment to an existing agreement, the memorandum should provide the NOS or NOAA Control Number for the original agreement clearance or last amendment and the name of the attorney who reviewed the last action, if known.) The Agreement includes a Statement of Work (and/or a Proposal) for the project and budget breakouts for both agencies of total project costs including direct labor and the appropriate overhead rate for the NOS activity as determined by the NOAA Office of Finance and Administration.

This project is essential to the furtherance of NOS's programs, is of mutual interest to both parties and cannot be done as effectively without the participation of the other costs has been approved by the Under Secretary for Oceans and Atmosphere or designee, provide a statement that the cost for the project is apportioned equitably.

The following additional information is provided to aid the clearance process:

Funding Organization: H. John Heinz, III, Center for Science, Economics and the

Environment

Total Amount of Project: 300K

NOS Cost: 150K

Partner's Cost: 150K

Technical Contact Person: XXXXXXXXXX, 301-XXXXXXX

Attachment 5b

Who Will Accomplish the Work: Coastal Programs Division

Subject/Key Word: YOTO **New/Existing Agreement:** New

Period of Performance: 1 yr (May 1, 1998 - April 30, 1999)

NOS Authority: Coastal Zone Management Act, 16 U.S.C. 1451-1464, DOC Joint

Project

Authority, 15 U.S.C. 1525

Funding Organization Authority:XXXXXXXXXXXXX

Number of FTE(s) Required: 1

Organization: N/ORM

If you have any administrative questions, please contact XXXXXXXXX at 301-XXXXXXX.

Enclosure

SAMPLE TRANSMITTAL MEMORANDUM FOR MOA/U's

MEMORANDUM FOR: Director, N/MB

ATTN: N/MB5

FROM: Director, N/CGS

SUBJECT: Transmittal of MOA/U for Clearance

The following additional information is provided to aid the clearance process:

Partner Agency: State of California **Amount of Reimbursement:** No funds

Technical Contact Person: XXXXXXXXXX, 301-XXXXXXX

Responsible Office: N/CGS Subject/Key Word: NSRS

New/Existing Agreement: New

Period of Performance: 5 years (May 1, 1998 - April 30, 2003)

NOS Authority: U. S.C. Title 33, Section 883e **Partner Agency Authority:** XXXXXXXXXXXXXX

Number of FTE(s) Required: 0.39

Organization: N/NGS

If you have any administrative questions, please contact XXXXXXXXX at 301-XXXXXXX

Enclosure Attachment 5c

INTERAGENCY AGREEMENT AND MOA/U CHECKLIST

All Agreements

- 1. Does the agreement cite applicable administrative/programmatic legal authority(ies) for the action?
- 2. Does the agreement relate the objectives to the legal authority and to other agency policies and goals, as appropriate?
- 3. Does the agreement provide a comprehensive description of what is being agreed to?
- 4. Does the agreement state the duration of the arrangement?
- 5. Does the agreement state that NOS's commitments and obligations under the agreement are subject to the availability of funds?
- 6. Does the signature block reflect the appropriate official per the delegations of authority?
- 7. If the action is a modification to an agreement previously reviewed by the Office of General Counsel, is a copy of the OGC clearance attached with the name of the attorney who reviewed the matter provided, if available?

Reimbursable Transfers of Funds

- 1. Does the agreement include a provision requiring advance funding (if the legal authority requires it)?
- 2. If not required by legal authority and the agreement is with another Federal agency, does the transmittal memorandum explain why advance funding cannot be obtained?
- 3. If the agreement is with a non-Federal sponsor that will not make advance payments, has a waiver been obtained in accordance with the NOAA Budget Handbook?
- 4. Does the agreement indicate whether the funding is one or no year?
- 5. Does the agreement include a budget breakout of total costs including direct labor and the appropriate overhead rate?

Attachment 6

- 6. If total costs are to be recovered, does the transmittal memorandum contain a statement that full cost recovery will be achieved in compliance with the NOAA-wide Standardized Labor Distribution Worksheet Procedures issued June 26, 1996?
- 7. If total costs are not to be recovered, has a waiver been prepared and approved in accordance with the NOAA Budget Handbook for distributed costs and provided with the transmittal memorandum?
- 8. If the agreement is for a longer period than the current fiscal year, does agreement include estimated funding levels for each of the subsequent years and have a provision that says funding is currently available for this fiscal year, however, performance beyond current fiscal year is dependent on availability of funds?
- 9. Does the transmittal memorandum or other supporting documentation advise that (1) the requesting agency cannot perform the project (or service) economically; (2) the services covered by the agreement are not in competition with private enterprise; (3) the end results will serve the public interest and are consistent with NOS programs; (4) undertaking the project will not result in diversion of resources to the detriment of NOS basic programs; (5) the results of the service will not result in controversy that will have an adverse effect on the Department's reputation; and (6) no exclusive proprietary interest will accrue to the other party?
- 10. If the agreement is an Economy Act transaction, does the agreement state that: (a) funds are available; (b) the order is in the best interest of the Government; (c) the agency to fill the order or provide the services is able to do so; and (d) the goods or services cannot be provided as conveniently or cheaply by a commercial enterprise? A copy of the Determination and Finding from the sponsor will satisfy this requirement.
- 11. Is the transfer of funds for the award of a new (or modification of an existing) contract, cooperative agreement or grant? If the action is a modification, does the agreement reference the contract, cooperative agreement or grant number?

Joint Project Agreements

- 1. Does the agreement explain that the project is of mutual interest to both parties and cannot be done as effectively without the participation of the partner and NOS?
- 2. Does the agreement explain that the cost for the project is apportioned equitably?

- 3. Does the transmittal memorandum explain that the project is essential to the furtherance of NOS's programs?
- 4. Does the agreement identify the partner as a nonprofit organization, research organization, or public organization or agency?
- 5. Does the agreement include budgets for each of the participants?
- 6. If the cost is not apportioned equitably, has a waiver been obtained from the Under Secretary for Oceans and Atmosphere or designee?

SAMPLE REQUEST FOR PROJECT APPROVAL

MEMORANDUM FOR: Paul F. Roberts II

Chief Financial Officer/ Chief Administrative Officer

FROM: John E. Oliver

Director, Management and Budget Office

SUBJECT: Request for Approval of Project \$1,000,000

and/or 10 Work Years or More

The following abstract is submitted for your review and approval.

SPONSOR:
AGREEMENT:

TITLE OF PROJECT:

LO: FMC:

Part I:

FY 98 Funded FY 99 Proposed

Task No.

Total Funds/Dollar Amount:

Labor Costs:

Other Objects (Incl. SLUC):

NOAA Support:

Positions (Number)

Full-Time Permanent:

Other:

Work-Years

Total Amount of Increase

(Include Above):

Part II:

The additional positions required to accomplish this task will come from the presently available resources within the (Organization).

| Part III: Description | | | |
|--|------|------------------------|----------|
| RECOMMEND APPROVED: | | APPROVED/DISAPPROVED | |
| Chief Financial Officer/Chief Administrative officer | Date | Deputy Under Secretary | Date |